PUBLIC DOCUMENT

January 15, 2002

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
600 Seventeenth Street, N.W.
Washington, DC 20508

Re: **Public Comments on Potential Action Under Section 203 of the Trade Act of 1974 With Regards to Imports of Certain Steel:** ***Response Comments on What Action the President Should Take Under Section 203 of the Trade Act of 1974, as Amended, With Regard to Imports of Carbon and Alloy Flat Products***

Dear Ms. Blue:

Pursuant to the Notice of Request for Comments (66 Fed. Reg. 54321, October 26, 2001, modified 66 Fed. Reg. 59599, November 29, 2001 and 66 Fed. Reg. 67349, December 28, 2001) on behalf of the Minimill 201 Coalition (Flat Products); Cleveland-Cliffs, Inc.; Gallatin Steel Company; Geneva Steel Company; IPSCO Steel Inc.; Nucor Corporation; Rouge Steel Company; Steel Dynamics, Inc.; WCI Steel, Inc.; and Weirton Steel Corporation, we hereby submit Response Comments on What Action the President Should Take Under Section 203 of the Trade Act of 1974, as Amended, With Regard to Imports of Carbon and Alloy Flat Products.

Should you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

Roger B. Schagrin
SCHAGRIN ASSOCIATES
1100 Fifteenth Street, N.W.
Suite 700
Washington, DC 20005
Telephone: (202) 223-1700
Facsimile: (202) 429-2522

Counsel for the Minimill 201 Coalition (Flat Products); Cleveland-Cliffs, Inc.; Gallatin Steel Company; Geneva Steel Company; IPSCO Steel Inc.; Nucor Corporation; Rouge Steel Company; Steel Dynamics, Inc.; WCI Steel, Inc.; and Weirton Steel Corporation

PUBLIC DOCUMENT

SUBMITTED TO THE
TRADE POLICY STAFF COMMITTEE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

PUBLIC COMMENTS ON POTENTIAL ACTION UNDER SECTION 203 OF THE TRADE ACT OF 1974 WITH REGARD TO IMPORTS OF CERTAIN STEEL

Responses to Comments on Presidential Action Under Section 203 of the Trade Act of 1974 With Regard to Imports of Carbon and Alloy Flat Products

Filed on Behalf of:

The Minimill 201 Coalition (Flat Products);
Cleveland-Cliffs, Inc.;Gallatin Steel Company;
Geneva Steel Company; IPSCO Steel Inc.;
Nucor Corporation; Rouge Steel Company;
Steel Dynamics, Inc.; WCI Steel, Inc.;
Weirton Steel Corporation; and the
Independent Steelworkers Union

By:

SCHAGRIN ASSOCIATES
1100 Fifteenth St., N.W.
Suite 700
Washington, DC 20005
Telephone: (202) 223-1700
Facsimile: (202) 429-2522

January 15, 2002

PUBLIC DOCUMENT

TABLE OF CONTENTS

INDEX OF EXHIBITS

I. TARIFF RELIEF PERMITS ESSENTIAL PRICE INCREASES

The Brazilian respondents argue that "the market-preclusive tariffs suggested by the ITC will have virtually no impact on U.S. market prices for finished steel products."[1] Other respondents make similar arguments.[2] There is no need to resort to speculative economic models to evaluate respondents' claims because the reaction in the U.S. market to anticipated tariffs on flat-rolled products proves that respondents are wrong.

---

[1] Brazilian Respondents' Comments (January 4, 2002) at iv.

[2] *See* EUROFER Comments (January 4, 2002) at 11 ("Nor would any import measures bring about any significant increases in U.S. producers' prices"); and Japanese Respondents' Comments (January 4, 2002) at III ("imports have little to do with currently depressed steel prices").

As discussed in our earlier comments to the TPSC, import prices continued to fall after the end of the Commission's data record and U.S. market prices remained under tremendous price pressures. U.S. producers could not increase prices notwithstanding the Commission's affirmative determination. Action by U.S. producers to increase prices on flat-rolled products was possible only after the import price pressure was removed from the market. The market anticipated implementation of relief by the President in the form of significant tariffs on flat-rolled products. Thus, importers stopped committing to import purchases for delivery after February 2002.[3] Despite a lack of any significant demand increases, with import pricing no longer suppressing U.S. market prices, U.S. producers could make price increase announcements for all major flat-rolled products -- hot-rolled, plate, cold-rolled, corrosion-resistant, and tin mill. *See* Exhibit 1 (list of price increase announcements).[4] Thus, market events since the Commission's determination merely confirm the strong causal relationship between imports and low U.S. market prices. If the forty percent tariff is not implemented by the President, the announced price increases will collapse as low priced imports return to the U.S. market.

---

[3] *See* "U.S. traders bridle as they await 201 whip," *Metal Bulletin* (6 December 2001) at 9 ("February 16th is the deadline, you can't book for February 20th delivery").

[4] *See also* Schagrin Comments on Flat Products (January 4, 2002) at 17 (discussion of price increase announcements).

With effective relief, there will be a cost increase for manufacturers who incorporate some steel into their products, such as appliance producers. Nevertheless, the cost increase is essential to the survival of the U.S. steel industry.[5] Steel users have enjoyed record low pricing for a significant period of time. As noted before the Commission, even the maximum "50 percent tariff against a $200 price is only going to yield a hundred dollar's worth of relief. And that wouldn't get you back to pre-crisis levels."[6] Some progress toward more normal pricing levels should be expected by steel users.[7] Indeed, steel price increases may eventually exceed the ten percent increase predicted by some economic models with imposition of relief.[8] These essential price increases are likely to be gradual. Moreover, the impact of steel price increases will be attenuated by long term contracts employed by major steel purchasers, precisely to mitigate changes in steel costs.[9] It is also important to recognize that collateral effects run both

---

[5] CITAC is simply incorrect asserting minimills are not significantly affected by imports and stating that: "In 2000, minimill producers Nucor and SDI had record sales and Nucor had record profits." Consuming Industries Trade Action Coalition ("CITAC") Comments (January 4, 2002) at 10. Confidential questionnaire responses from these companies to the ITC belie CITAC's assertions. As to flat products, these minimills were adversely affected by imports and tracked industry trends.

[6] Commission Remedy Hearing tr. 170 (Busse, SDI).

[7] "It is in our interest to have a strong domestic steel industry, but we do not see how tariff impositions will not hurt appliance manufacturers." Association of Home Appliance Manufacturers Comments (December 28, 2001) at 3. The fastener users recognize that: "Many developing countries have subsidized the production of steel in order to provide a basic building block of a manufacturing economy. However, when their own domestic markets have not been able to absorb their total steel production, they have turned to exports as a means of keeping their steel industries operating." Steel Fastener Working Group Comments (December 21, 2001) at 3.

[8] Some absorption of duties will occur even at low prices. The record here strongly establishes that foreign producers will cut their prices to whatever degree necessary to make the sale and will absorb duties as necessary. *See e.g.*, testimony of respondents' economist Dr. Prusa (Remedy Hearing tr. 361) and Nucor's DiMicco (Remedy Hearing tr. 174). Import price declines in the record here greatly exceed ten or twenty percent. A further reduction from current levels is probable because the objective is to move steel. Foreign producers are not ignorant of economics and attempt to sell in the United States at the highest price they can get and still obtain the sale. The greater the need to move steel the greater the angle of import price declines.

[9] Nevertheless, domestic steel producers certainly understand the problem of dumped steel inputs. As noted in Section III, this is an important reason that Title VII relief is not as effective as it might be for domestic producers. We also note that

ways. The injury suffered by the domestic steel industry has severely harmed those many companies which supply the steel industry, including the U.S. ore industry, U.S. shipping concerns, and the many smaller enterprises dependent on domestic steel production.[10]

---

if imports of articles containing substantial amounts of steel become a problem (or are a problem), the affected industries have an avenue for relief under the U.S. trade laws. But it is unfair for steel consumers to demand an existence at the expense of the U.S. steel industry. Indeed, the efforts of steel users to drive the U.S. price to the world price are what injure and threaten to injure the domestic steel producers. The domestic steel producers sympathize with steel users and recognize low world steel prices. But the conditions for steel negotiations which might address the worldwide over production problem must be created by first stabilizing the situation in the United States.

[10] For example, RHI Refractories Holding Co. recently declared bankruptcy to restructure because the "continuing financial crisis in the U.S. steel industry has sharply reduced demand for refractory products." "Financial heat burns hole in RHI Refractories," *American Metal Market* (January 8, 2002) at 2 quoting Guenter Karhut, chief executive officer of RHI Refractories.

Tariff-rate quotas (and particularly those at the levels suggested by respondents)[11] would simply not be an effective approach to the price problem.[12] As long as significant volumes of imports are in the U.S. market at low prices, U.S. market prices cannot recover.[13] Some of the

---

[11] For example, Brazilian respondents want slab quota of 3.5 million tons in year one, rising to 4.0 million tons in year three. Brazilian Respondents' Comments at iv. This represents an initial increase of 32.3 percent and a 51.2 percent increase in year three for Brazilian slab exports over their 2000 volume. Exhibit 2.

[12] Indeed, as noted by the Japanese respondents: "increased sales at the same unprofitable, record-low prices would not solve the industries' problems." Japanese Respondents' Comments at 2.

[13] CITAC says the "financial community is withholding capital from steel companies because of concerns about a repeat of the 1998 import surge . . . ." CITAC Comments at 23. But the problem is more basic, *i.e.*, whether the industry can earn an adequate return to justify investment. Even minimills, which lack legacy costs, cannot justify capital investment financing. *See* Schagrin Flat Products Prehearing Injury Brief (September 10, 2001) at II-25; Schagrin Flat Products Posthearing Injury Brief (September 28, 2001) at 16; and Schagrin Flat Products Posthearing Remedy Brief (November 13, 2001) at 19.

many other reasons a quota system is inadvisable are highlighted by respondents' conflicting recommendations for establishment and administration of tariff-rate quotas. Most prominent among these conflicts is that between country-specific quotas and global quotas[14] and whether

[14] For example, the Korean producers want country-specific quotas. Korea Iron & Steel Association (KOSA) Comments on Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Tin Plate (January 4, 2002) at 2. In contrast, Siderar (Argentina) advocates a global quota as less disruptive. Siderar S.A.I.C. ("SIDERAR") Comments (January 4, 2002) at 21-22; *see also* Government of the Bolivarian Republic of Venezuela Comments (January 4, 2002) at 24-25 (global not country-specific quotas), and Japanese Respondents' Comments at 17 ("flat-rolled steel is imported from a large array of countries, very few representing more than 10 percent of total imports"). As to slab specifically, the Brazilians want quotas to be on "a country-specific basis, at least for the major supplying countries." Brazilian Respondents' Comments at iii. In contrast,

any country-specific quotas established should reflect historical export levels or potential export levels.[15] In short, tariff-rate quotas are a complex approach which open many disputes, are susceptible to fraud, and are ineffective even if properly administered.

Argentina argues that: "If the President selects a quota for slabs, he should select a global quota and not a country-specific quota." Government of Argentina Comments (January 4, 2002) at 24.

[15] For example, if country-specific quotas are implemented, Siderar wants the quota set in a manner that will not prejudice countries which "did not export large volumes in the past." Siderar Comments at 23; *see* U.S. Steel Kosice (Slovakia) Comments (January 4, 2002) at 2 (country-specific quotas should be based on ability to supply, not historic exports, and KOSA proposed quota levels (in its Posthearing Remedy Brief) are "unfair"). In contrast, the Indian producers state that "any quota should be based on import levels during the period 1998 through 2000 because the statute provides that quotas must be based on imports in the most recent three years that are representative of imports." Essar Steel, Ltd.; Ispat Industries Ltd.; Jindal Vijaynagar, Ltd.; The Steel Authority of India, Ltd.; and Tata Iron and Steel Company, Ltd. Comments ("Indian producers") (January 4, 2002) at 11 citing 19 U.S.C. §2253(e)(4).

Finally, respondents' unrelenting efforts to characterize the industry's problems as fundamentally caused by "excess and inefficient capacity" should be rejected.[16] The most efficient mills as well as domestic furnaces of all sizes have suffered from the ruinous import pricing. Moreover, as noted in the Administration's recent report on steel prepared in conjunction with the recent OECD steel meeting in Paris, it is difficult to credit assertions of excess U.S. capacity given the fact that U.S. steel demand exceeds current production capacity.[17] To the contrary, the fundamental cause of the industry's distress are low U.S. market prices. Those prices can be increased when the downward price pressure of imports is removed. When U.S. market prices are not distorted by huge excess foreign capacity and the transference of economic troubles from foreign countries to the U.S. market in the form of ridiculously low prices, integrated producers can continue to meet their incurred obligations.[18] In sum, the

[16] *See e.g.*, Indian Producers' Comments at 4.

[17] OECD Follow-up to Special Meeting at High Level on Steel Issues (December 17, 2001) at 16 ("The United States has remained by far the largest net importer of steel products, so it is not obvious that the U.S. steel industry accounts for a considerable portion of global `excess capacity' that might exist, and by various standards the U.S. industry is amongst the most efficient in the world"). The many misrepresentations of the Administration's OECD report will not be rebutted specifically in these comments. We simply note that a fair reading of that report does not support the positions attributed to it by the comments of many respondents.

[18] The Japanese respondents note that "integrated producers support four retirees for every active employee, and report

President should reject the suggestion that its policy should be to "retrain steel industry workers in a profession that has a future,"[19] and should implement a policy which permits a vibrant and modern steel industry to flourish in the United States.

II. REJECTION OF FEEDSTOCK EXCLUSIONS IS ESSENTIAL TO EFFECTIVE RELIEF FOR THE DOMESTIC INDUSTRY

A. The Negative Volume and Price Effects of Suggested Flat-Rolled

---

liabilities for retiree care health costs in excess of $8 billion for around 400,000 retirees." Japanese Respondents' Comments at 30 citing Administration's OECD Report at 23-24. The integrated producers should not be buried on these grounds, but rather praised.

[19] Andrew T. Heekin Comments (undated) at 3.

Feedstock Exemptions Would Preclude Positive Market Developments

Respondents have sought to eviscerate relief by proposing broad exclusions for imports purchased for further processing. Thus, BHP wants an exemption for "feedstock" sold to U.S. producers.[20] POSCO and KOSA seek an exclusion for hot-rolled used "to manufacture cold-rolled steel, galvanized steel and tin plate."[21] Likewise, KOSA also seeks an exclusion for "full-hard cold-rolled steel similar to that recommended for hot-rolled steel."[22] Feedstock exemptions should be rejected because the substantial negative volume and price effects on domestic producers of such exemptions would negate relief.

Respondents would be able to maintain or increase import volumes to the United States if the feedstock exemptions requested in their submissions are established. Thus, for BHP, granting feedstock exemptions would essentially permit all its imports to enter the United States, regardless of price. BHP estimates that "about 90 percent of BHP's exports to the United States

[20] BHP Steel (AIS) Pty. Ltd., BHP Steel (JLA) Pty, Ltd., BHP New Zealand Steel Limited and BHP Steel Americas, Inc (collectively "BHP") Comments (January 4, 2002) refer to an "Australian `feedstock'" exclusion.

[21] KOSA/POSCO Comments at 5. POSCO suggests that "the President might wish to impose an end-user certification requirement {which} would require UPI and other U.S. steel producers importing hot-rolled steel for re-rolling into other flat-rolled products to certify that they used the excluded product to produce cold-rolled steel, galvanized steel or tin plate and that the hot-rolled steel was not sold in the merchant market." *Id*. at 6.

[22] KOSA Comments (January 4, 2002) at 2. KOSA opposes any relief for Tin Plate products. *Id*.

are shipments of raw material feedstock (*i.e.*, slab, hot-rolled coil, and cold-rolled `full hard') sold to U.S. producers of finished flat-rolled products. . . ."[23] Similarly, the Japanese respondents, in arguing for country specific quotas, assert that 89 percent of flat-rolled imports from Japan are not produced domestically (or not produced in sufficient quantities) or are purchased by longstanding customers.[24]

[23] BHP Comments at 1.

[24] Japanese Respondents' Comments at 18.

Neither could a feedstock exemption be logically limited to processing merely in the flat products continuum. Indeed, hot-rolled represents at least as high a portion of the raw material cost of welded pipe as hot-rolled does for processing of downstream flat products. Pipe is merely slit, bent, and welded hot-rolled. Moreover, pipe producers are just as much steel producers as those parties seeking feedstock exemptions. Yet a feedstock exemption for pipe would have a tremendous negative impact on the largest commercial market for hot-rolled. In short, grant of feedstock exemptions would mean essentially no reduction in the volume of low priced imports entering the United States.[25]

[25] The feedstock exclusions proposed are similar to tariff-rate quotas and like such quotas should be rejected because it would let in a huge volume of imports, would be ripe for abuse and could not be effectively enforced.

Feedstock exemptions would also inherently have a depressing and suppressing effect on prices for all next stage flat products. This is one of the important reasons justifying the Commission's like product finding. If low priced imports are permitted entry based on their processing into downstream imports, domestic efforts to raise prices will be frustrated. The evidence of this impact can be seen in the disparate reactions of foreign producers to the recommended tariffs on flat products and the tariff-rate-quota recommended for welded pipe. As detailed earlier, importers have refused to risk higher duties on imported flat products and the domestic producers have been able to announce price increases due to the reduction in import price pressure. In contrast, the recommended tariff-rate quota on welded pipe has led to a flood of imports at low prices precluding any increase in pipe prices and threatening further price declines due to both the direct price competition as well as the price pressures created by excess supply from imports.[26] If the President carves out a huge loophole in relief in the form of a feedstock exemption, domestic industry efforts to raise U.S. market prices will be entirely frustrated.

B. Denial of a Feedstock Exemption for Slab is the Foundation of Effective Relief for the Domestic Industry

[26] For this reason it is essential that the President provide tariff relief to pipe producers equivalent to that granted to flat product producers. *See* Schagrin Welded Pipe Comments (January 4, 2002) at 13.

Critical to the efficacy of relief is the denial of a feedstock exemption to slab. Some respondents argue that slab prices do not affect hot-rolled and cold-rolled pricing.[27] The comments of other parties seeking feedstock exclusions strongly oppose disparate treatment for slabs. Those parties are correct to note that hot-rolled and full-hard cold-rolled are "conceptually the same as slabs -- they are imports that are not sold on the merchant market but, instead, are used by U.S. steel companies to produce downstream, value-added flat-rolled products. The only difference is that slab is simply one process further removed."[28] USS-POSCO states that "UPI is a converter of hot bands just as, for example, California Steel Industries (`CSI'), {UPI's} major competitor, is a converter of slab."[29] UPI properly complains that CSI "would continue to have unimpeded access to low-cost imported slabs for further conversion from any foreign mill at no penalty. In contrast, UPI, which purchases hot-rolled steel for further conversion from its owners would be subject to duties . . . ."[30] Similarly, Steelscape warns that: "Excluding slabs (used as feedstock by California Steel Industries) from tariffs, while applying tariffs to hot roll coil (used as feedstock by USS Posco Industries and Steelscape) and cold roll full hard (used as feedstock by Pinole Point Steel) would severely disrupt the competitive balance of the West Coast steel mills."[31] "UPI strongly urges" (and we strongly agree), that the President should

[27] *See e.g.,* Brazilian Respondents' Comments at 2 ("imported slab prices do not affect hot-rolled prices").

[28] Pohang Iron & Steel Co., Ltd (POSCO) and Korea Iron & Steel Association (KOSA) Comments (January 4, 2002) at 4 (footnote omitted). We note that the citation to the U.S. OECD Steel Report provided in the POSCO/KOSA comments is incorrect.

[29] USS-POSCO Industries ("UPI") Comments (December 21, 2001) at 1.

[30] UPI Comments at 2.

[31] Steelscape, Inc. Comments (January 3, 2002) at 2; *see also* Brazilian Respondents' Comments at 6 ("Heartland Steel, a cold-rolled steel operation, will . . . source {hot-rolled} through a tolling arrangement with a U.S. integrated steel producer

adopt a remedy that "does not make a distinction between a company like UPI, that converts its raw material hot bands into finished product, versus a company that converts its raw material slabs into many of the same finished products."[32] In addition, applying a tariff-rate quota to slab will likely put Geneva Steel out of business, further disrupting the competitive balance on the West Coast, where Geneva is one of only two producers of plate and hot-rolled. Thus, the answer is not to exempt feedstock imports, but rather to apply the same forty percent tariff to slab as should be applied to flat-rolled products.

---

that **will roll Brazilian slab** into hot-rolled steel for Heartland's consumption") (emphasis added).

[32] UPI Comments at 2. UPI notes that: "Large companies like Silgan Containers and Crown Cork & Seal rely on us for virtually 100% of their western requirements. UPI cannot survive and serve its customers if the U.S. Government imposes disparate remedies on companies that are essentially in the same business." *Id*. at 3.

While many of the flat products serve as feedstock for other flat products, slab is a critically important one. Production of steel is where most employment and the highest capital investment is required. Production of raw steel is also the segment of the industry most fundamentally threatened by imports. As detailed in prior comments, U.S. raw steel production continues to fall dramatically, while foreign producers are maintaining and even increasing production.[33] The position of some respondents is clear -- the U.S. integrated producers should simply abandon the production of steel as relines of their furnaces come due.[34] As testified to before the TPSC, these are exactly the relines which are in danger if no relief on slab is provided. But it is not simply the relines that are in danger in the United States. The low-priced slab

[33] *See* Schagrin Flat Products Comments at 23-25. As noted, U.S. raw steel production capacity utilization has fallen from 75.8 percent at the end of June 2001 to 63.7 percent for the week ended December 29, 2001. *Id*. at 24; *see also* Exhibit 3 (most recent raw steel production data by country and region from *Metal Bulletin* (Dec. 24, 2001)).

[34] *See* Brazilian Respondents' Comments at 4 ("Huge investments to maintain these assets through the next major reline or to overhaul and upgrade them will still be economically irrational whether import relief is granted or not"); *see also* AK Steel Corporation, California Steel Industries, Inc., Duferco Farrell Corporation, and Oregon Steel Mills, Inc. Comments (January 4, 2002) at Exhibit 10 relying on Metal Strategies data (relines totalling 21 million tons of capacity projected for the 2002-2005).

imports similarly endanger the raw steel production of even the most efficient producers such as Nucor and SDI. Exempting slab from relief strongly discourages investment in raw steel production in the United States whether by the minimill producers or by blast furnaces.

Respondents assert that commercial slab is not available in the United States, particularly on the West Coast. Yet these claims fail to address the role of low-priced slab imports in the shut down of Geneva, a steel producer which is designed for the production of slab for commercial sale and a producer geographically well positioned to serve the West Coast. As detailed publicly in our earlier submission to USTR (and confidentially in more detail to the Commission), Geneva is a low-cost slab producer which was a major supplier of commercial slab to West Coast converters.[35] Geneva relied on these commercial slab sales for successful financial performance as Geneva's furnace capacity far exceeded its rolling capacity. The elimination of Geneva's sales due to slab imports was a critical factor in Geneva's shut-down of

[35] *See* Schagrin Comments at 3; Schagrin Flat Products Posthearing Injury Brief at 38 and Exhibit 38 thereto; and Schagrin Flat Products Posthearing Remedy Brief at 16.

its two blast furnaces. Those blast furnaces can quickly be back in operation with effective relief from the President.[36]

[36] Obviously Geneva seeks to earn an operating profit on its commercial slab sales. Nevertheless, even slab sales at a loss on a fully allocated cost basis can be economically reasonable, as long as slab sales prices exceed the marginal cost of production.

U.S. raw steel production is endangered because slab import prices have fallen below U.S. producers' marginal cost of production for slab and slab imports have been increasing. The Mexican producer Imexsa admits "imports from Mexico increased, but imports from Brazil, Russia, Ukraine, Australia, and Japan increased much more significantly."[37] As set out in Imexsa's comments, slab imports increased in the period 1996-2000 by 420.4 percent from Ukraine, by 263.0 percent from Japan, by 261.1 percent from Russia, by 65.9 percent from Australia, by 40.8 percent from Brazil and by 30.0 percent from Mexico.[38] More importantly, slab imports increased significantly in the third quarter 2001 and then exploded in October and November 2001. Indeed, the Commerce import data for October and the preliminary import data for November indicate that these were two of the highest months ever for slab imports, notwithstanding stagnant steel demand in the United States. Exhibit 4. Slab imports from Russia in October alone were 263,705 tons; a volume greater than in any prior *quarter* in 2001 (even though slab imports from Russia were substantial in each quarter of 2001).[39] Exhibit 4. The CIF value for Russian slab in October 2001 was only $155 per ton. Exhibit 5. Slab is also pouring in from Brazil, with imports of Brazilian slab of 656,851 tons in the third quarter 2001 and 233,838 tons in October 2001.[40] Brazilian slab CIF values were only $170 per ton in the

---

[37] Industrias Monterrey, S.A. de C.V. ("IMSA"), Zincacero, S.A. de C.V. ("Zincacero) and IMSA, Inc. Comments (January 4, 2002) at 22 (footnote omitted).

[38] *See* Ispat Mexicana, S.A. de C.V. ("Imexsa") Comments (January 4, 2002) at 7 citing ITC data compiled from Commerce statistics.

[39] Through October 2001, imports of slab from Russia totalled 913,652 tons. Exhibit 4.

[40] Through October 2001, imports of slab from Brazil totalled 1,617,093 tons. Exhibit 4.

third quarter and $166 per ton in October.[41] Likewise, Australia and Ukraine slab imports continue to grow. Slab imports from Australia were 78,802 tons in the third quarter 2001 (CIF value $168 per ton) and 39,177 tons in October 2001 (CIF value $162 per ton).[42] Imports of slab from Ukraine in the third quarter 2001 were 82,964 tons (CIF value $163 per ton), almost four times the volume of slab imports from Ukraine in the first half of 2001. Imports of slab from Mexico in the third quarter 2001 were 448,972 tons, much higher than in the either of the first two quarters of 2001.[43] Finally, a huge volume of slab imports from China (31,315 tons) appeared in October 2001, as compared to the total of 5,726 tons of slab imported from China in the first three quarters of 2001. Exhibit 4. The CIF value for imports from China in October was likewise extremely low, only $164 per ton. Exhibit 5. Thus, the countries increasing slab exports have registered such significant volume increases because the slab prices they offer are so absurdly low.[44] *See* Exhibit 5. As pointed out in our earlier TPSC submission, the Brazilian producer CST is virtually certain to be selling below its cost of production[45] and slab prices from Russia and Ukraine are similarly disconnected from true production costs. While Mexican slab

[41] Together Russia and Brazil accounted for 54 percent of total slab import in the third quarter 2001 and an astounding 78 percent of imports in October.

[42] Through October 2001, imports of slab from Australia were 272,486 tons. Exhibit 4.

[43] Slab imports from Mexico represented between one-quarter and one-third of total slab imports in each of the first three quarters of 2001. While Imexsa is correct that other imports have increased more rapidly, the imports of Mexican slab are a significant part of the slab problem.

[44] *See* Schagrin Flat Products Posthearing Injury Brief at 38-39 (discussing import injury to U.S. slab production).

[45] *See* Schagrin Flat Products Comments at 21 and footnote 68.

prices may be above the lowest priced imports,[46] the purportedly high value Mexican slabs are still imported below U.S. producer prices.[47]

The glut of slab on the world market and the constantly lower slab prices were confirmed by Imsa Acero (the Monterrey subsidiary of Grupo Imsa S.A. de C.V.) when it had to purchase slabs to replace Ipsat Mexicana shipments which have been interrupted by a labor dispute. Santiago Clariond, CEO of Imsa Acero, noted the "tremendous" supply of slab on the world market available from Brazil, Venezuela and Russia among others.[48] Mr. Clariond noted the slab prices continue to fall and are currently \$140 to \$145 per metric ton f.o.b. and \$135 to \$140 per metric ton f.o.b. from Russia.[49]

---

[46] *See* Camara Nacional de la Industria del Hierro y del Acero ("CANACERO") Comments (January 4, 2002) at 16 and Imexsa Comments at 9.

[47] As to compensation to Mexico, we believe an appropriate money dispensation would be the most appropriate approach to this obligation.

[48] "Imsa Acero move fast to broaden slab supply," *American Metal Market* (January 15, 2002) at 2.

[49] *Id*.

In sum, the tariff remedy must be applied to slab without a feedstock exemption in the form of a tariff-rate quota in order for relief for flat-rolled products to be effective.

III. TITLE VII DUTIES DO NOT JUSTIFY REDUCTION IN THE §201 TARIFF

Many respondents claim that the Commission ignored the effect of Title VII relief in making their remedy recommendations.[50] To the contrary, the relationship of Title VII relief to both injury and the necessary relief was fully briefed and discussed before the Commission.[51] The President should not reduce the forty percent tariff recommendation, which was made by Commissioners Bragg and Devaney fully cognizant of the existing Title VII orders.

The existence of Title VII orders on certain flat products from certain countries does not lessen the need for a forty percent tariff. Most important, the Title VII orders are by no means comprehensive. As noted by the Commission, and in our earlier comments to the TPSC, foreign producers easily shift production among the various flat products and view their operations from a consolidated perspective.[52] Moreover, the flat products have strong competitive effects on each other in market.[53]

---

[50] *See e.g.*, India Producers' Comments at 5; POSCO/KOSA Comments at 7-8; KOSA Comments at 3; Japanese Respondents' Comments at I and 9-10.

[51] Schagrin Flat Products Posthearing Remedy Brief at 10-11.

[52] *See* Determinations and Views of the Commission (December 2001) at 38 and 42; and Schagrin Comments at 5-8.

[53] *Id*. Indeed, the comments made by the parties on feedstock exclusions strongly support the close inter-relationship

between flat products. *See* Section II above.

Foreign producers have also compromised the effectiveness of Title VII relief by establishing operations in third countries which can be fed with material from their home market production and then exported to the United States.[54] For example, hot-rolled subject to Title VII relief can be exported at unfair prices to a third country for processing into a downstream product not subject to a Title VII order. In this way the downstream product carries with it the unfair price advantage of the input, but cannot be reached with investigation on the downstream product. Even if the input was considered dumped in the third country, almost all countries permit the avoidance of antidumping duties due if the downstream product is exported. Similarly, the administrative review margins in existing U.S. antidumping orders are threatened by extremely low-priced feedstock (such as slab and hot-rolled) on world markets.[55] The ability of foreign producers to shift production of the various flat products among various source countries is an important reason that comprehensive section 201 relief is vital.

Title VII orders have also been compromised because to maintain a market presence exporters absorb Title VII duties. Inherently this nullifies the intended price effect in the U.S. market of the Title VII order. Moreover, Department of Commerce policy permits absorption of the Title VII duties by foreign producers and imposes no negative adjustment to the margins in administrative reviews. This policy has validated and encouraged the growth of this major enforcement loophole which often vitiates Title VII relief. It is also likely that foreign producers

[54] The growth of these third country operations was set out in detail in our Prehearing Flat Products brief to the Commission (September 10, 2001) at II-30 through II-58. The new mills in countries which were not previously significant exporters to the United States include the full range of flat products.

[55] *See* Schagrin Flat Products Posthearing Injury Brief at 10; and Schagrin Flat Products Remedy Brief at 10-11.

will absorb the section 201 tariff if it is set too low, which is yet another reason for a forty percent tariff.[56]

[56] Respondents contend that section 201 duties paid by foreign producers will have adverse consequences in Title VII calculations. We hope respondents are correct in this assessment of pending Commerce findings on the issue in wire rod case, but we are not aware that this policy has been formally adopted by the Department. In any event, the Department's policy on section 201 duties will not affect its practice of permitting absorption of Title VII duties.

Tin mill products were especially identified as an industry where Title VII relief had solved all the import problems. Ironically, the Commission's injury determination, and hence the tin mill order itself, has been called into serious question by the Court of International Trade.[57] Indeed, the remand order requires a massive review of the extraordinarily complex record in the tin mill case. Thus, the Title VII relief for tin mill is less assured than for other flat-rolled products. Moreover, the tin mill order covers only Japan. The tin mill industry faces a tremendous new import challenge. For example, tin mill imports from Korea grew by 833 percent from 2,495 tons in 1999 to 23,270 tons in 2000. Exhibit 6. The interim period indicates an even greater increase of 195 percent (from 5,493 to 16,213 tons).[58] Exhibit 6. Similarly, imports from Brazil increased 798.5 percent from 1996 to 2000. Exhibit 8. Imports from China are also now entering the U.S. market, increasing from a few hundred tons in 2000 to 7,856 tons in interim 2001.[59] Exhibit 6. The reason tin mill imports from these countries are surging is price. The Brazilian tin mill AUV for third quarter 2001 was $123 a ton less than the AUV for all imports, the Korean AUV was $63 a ton less, and the China AUV was $60 a ton less. Exhibit 9.[60] Respondents' repeated statements to the TPSC (and on Capitol Hill) that imports over-sell

---

[57] *NSC v. ITC*, Ct. No. 00-09-00479 (December 31, 2001) (Remand Order to Commission).

[58] Thus, the import data for the last twelve months of the POI (July 2000 - June 2001) shows imports from Korea were 46.1 percent above the year 2000 total and 1,262.3 percent above the total for 1999. *See* Exhibit 7.

[59] This volume indicates acceptance of Chinese material in the market and further increases in tin mill imports from China to come.

[60] Other countries with low AUVs have also registered substantial volume increases. Thus, imports from Australia were less than 500 tons in 2000, but have risen to over 7,500 tons in the first three quarters of 2001. Australia's tin mill AUV for the third quarter 2001 was among the lowest for all countries, being $84 per ton less than the AUV for all countries. Similarly, Taiwan's third quarter 2001 AUV was even lower than Australia's and tin mill imports from Taiwan in the third quarter were greater than imports from Taiwan for all of 2000. Exhibit 6 and 9.

the domestic industry mis-represent the true situation regarding tin mill pricing.[61] In fact, tin mill imports undersell U.S. producers depressing and suppressing U.S. market prices.

[61] Although the specific data is confidential, we conclusively demonstrated that the aggregate tin mill AUV import data collected by the Commission was unreliable due to an obvious reporting error in a major exporting country's data which corrupted the aggregate AUV. *See* Schagrin Flat Products Posthearing Injury Brief at 8-9. Unfortunately, the overwhelming workload shouldered by the ITC staff apparently prevented collection of corrected data and resolution of the apparent inconsistencies between the public and confidential data. The respondents' continued reliance on this inaccurate data is inappropriate to say the least.

In sum, while the U.S. industry is retiring tin mill capacity permanently, foreign capacity is increasing and imports from countries not previously major exporters of tin mill to the United States are flooding in to capture market share.[62] Even if the order on Japan is ultimately upheld, the tin mill industry is merely another example of the shifting threat of imports.

IV. THE DEVELOPING COUNTRY EXCLUSION IS NOT JUSTIFIED

Respondents have presented a wide range of views on calculation of the developing country exclusion contained in Article 9.1 of the WTO Agreement (but not U.S. law).[63] What

[62] U.S. Steel announced on August 14, 2001 (after the close of the data record for production capacity) that it would permanently close the remaining cold-rolling and tin mill facilities at its Fairless Works on November 12, 2001. "U.S. Steel to shut C-R, tin facilities at Fairless," *American Metal Market* (August 15, 2001) at 1. Fairless was capable of making about 1.5 million tons of cold-rolled and tin mill products annually. This action was taken notwithstanding the concessions by workers and upgraded facilities. (Previously, U.S. Steel had shutdown its Aliquippa, Pennsylvania tin mill operations purchased from LTV Corp. in fall of 2000, the financial impact of which was to be taken in the second half 2001.) Prior tin mill capacity reductions were substantial, *i.e.*, 212,200 tons in interim 2001 as compared to interim 2000, and a decrease of 174,000 tons (3.7 percent) between 1996 and 2000. *Steel*, Vol. 2 (Information obtained in the investigation) at FLAT-22 (Table FLAT-18).

[63] Article 9.1 of the WTO Agreement on Safeguards

respondents' approaches have in common is that the results exclude their imports from coverage under section 201 relief. The requested developing country exclusions are not justified.

Many respondents have advocated application of the Article 9.1 exclusion based on narrow product categories which do not correspond to the Commission's like product finding. All the reasons which support a common like product finding for flat products also support a uniform remedy for the flat product like product category.[64] Moreover, a narrow product category approach produces anomalous results, such as the exclusion of Brazil from coverage for hot-rolled.[65] Obviously exclusion of a major producer and exporter such as Brazil is not justified.[66] Thus, a reality check on respondents' approach merely confirms the wisdom of matching the remedy recommendation to the like product definition.[67]

The results of an Article 9.1 analysis based on the flat-products like product have already been provided to the TPSC and those results establish that a developing country exclusion is not appropriate.[68]

---

[64] We note that two of the three Commissioners supporting relief for the tin mill products included tin mill in the flat products like product definition. *See Steel* at 269, 273 (Views of Commissioner Bragg) and at 36, fn.65 (finding of Commissioner Devaney expressed in Views of Commission) ("Commissioner Devaney has applied the same basic analysis as the majority. However he finds a single like product consisting of all flat products").

[65] *See e.g.*, Siderurgica del Orinoco, C.A. ("Sidor") Comments (January 4, 2002) at 13.

[66] The ability to switch production and export among the various flat products was emphasized in views of all Commissioners. The inter-relationship of flat product production and marketing for Brazilian producers was specifically detailed in prior submission. *See* Schagrin Comments at 7-8 (and particularly footnote 9).

[67] At least one government agrees. *See* Royal Thai Government (RTG) and Thai steel producers Comments (January 4, 2002) at 3 ("the product grouping should be consistent between that used for the Commission's finding of an increase in injurious or threatening imports (*i.e.*, the like product) . . . . Thus, applicability of the developing country exception should be determined on the basis of all carbon flat-rolled products receiving an affirmative injury determination. . . .").

[68] *See* Dewey/Skadden Comments (January 4, 2002) at 40-41 and Exhibit 14. The results do not change regardless of whether tin mill products are put in the product grouping.

Conclusion

The President should implement the relief on flat products recommended by Commissioners Bragg and Devaney.

Respectfully submitted,

Roger B. Schagrin
SCHAGRIN ASSOCIATES

Counsel for the Minimill 201 Coalition (Flat Products);
Cleveland-Cliffs, Inc.; Gallatin Steel Company;
Geneva Steel Company; IPSCO Steel Inc.; Nucor Corporation;
Rouge Steel Company; Steel Dynamics, Inc.;
WCI Steel, Inc.; Weirton Steel Corporation; and
the Independent Steelworkers Union

Exhibit 1
List of Price Increase Announcements Regarding Flat Products

	Prices Increase Announcements
Slab	None
Hot-Rolled	- Nucor Steel Arkansas increased $10 per ton effective with new orders starting Jan. 2002 and another $10 a ton for new orders in Feb. 2002. (Then prices $220 to $240.) "Nucor-Hickman maps two-stage sheet price boost," *American Metal Market*, Dec. 5, 2001 at 1. - Steel Dynamics Inc. supports the move by Nucor. "Steel Dynamics favors hot-rolled sheet boost," *American Metal Market*, Dec. 6, 2001 at 1. - Bethlehem Steel Corp would attempt to increase prices on plate products by $20 - $30 a ton, hot-rolled sheet and strip-mill plate by a minimum of $20 per ton effective Feb. 3. "Bethlehem pushing hike on plate," *American Metal Market*, Dec. 19, 2001. - California Steel Industries will raise prices between 3 and 10 percent on hot-rolled, hot-rolled pickled and oiled, galvanized and cold-rolled sheet on or after March 1, 2002, and hot-rolled will likely be raised by $20 to $25 per ton. "Mill's fortitude on price hikes gains credence: California Steel Industries planning increase of up to 10% in second qtr.," *American Metal Market*, Dec. 31, 2001 at 1. - Ispat Inland would attempt to increase prices on hot-rolled, cold-rolled, hot-dip galvanized and electrogalvanized sheet steel by $20 per ton, effective Feb. 1. "Ispat Inland boosting sheet prices by $20/ton," *American Metal Market*, Jan. 11, 2001 at 12. - Prices for hot-rolled steel have jumped 15% in the past 60 days. "U.S. Steel Mills Lift Key Domestic Prices," *The Wall Street Journal*, Jan. 10, 2002 at A2.

Plate	- Ipsco Inc. increased $20 per ton effective Jan. 1 2002. (Then current prices $270 per ton.) "Ipsco moves to boost prices for plate, coil," *American Metal market*, Dec. 3, 2001 at 1. - Nucor raises $20 per ton on plate products effective immediately. "Nucor joins $20/ton plate increase," *American Metal Market*, Dec. 12, 2001 at 12.
Cold-Rolled	- California Steel Industries would raise prices between 3 and 10 percent on hot-rolled, hot-rolled pickled and oiled, galvanized and cold-rolled sheet on or after March 1, 2002. "Mill's fortitude on price hikes gains credence: California Steel Industries planning increase of up to 10% in second qtr.," *American Metal Market*, Dec. 31, 2001 at 1. - Bethlehem Steel Corp would attempt to increase prices on cold-rolled and coated sheet by a minimum of $20 per ton, effective with Feb. 3 shipments. Cold-rolled and coated sheet currently are selling for about $280 to $290 per ton. "Mill's fortitude on price hikes gains credence: Bethlehem move raises Nucor's ante, but some mills opt for 'wait and see'," *American Metal Market*, Dec. 31, 2001 at 1. - Ispat Inland would attempt to increase prices on hot-rolled, cold-rolled, hot-dip galvanized and electrogalvanized sheet steel by $20 per ton, effective Feb. 1. "Ispat Inland boosting sheet prices by $20/ton," *American Metal Market*, Jan. 11, 2001 at 12. - Buyers of cold-rolled steel are being asked to pay more. "U.S. Steel Mills Lift Key Domestic Prices," *The Wall Street Journal*, Jan. 10, 2002 at A2.
Coated	- Bethlehem Steel Corp would attempt to increase prices on cold-rolled and coated sheet by a minimum of $20 per ton, effective with Feb. 3 shipments. Cold-rolled and coated sheet currently are selling for about $280 to $290 per ton. "Mill's fortitude on price hikes gains credence: Bethlehem move raises Nucor's ante, but some mills opt for 'wait and see'," *American Metal Market*, Dec. 31, 2001 at 1.
Tin	- US Steel would raise 3.25% on tin effective Jan. 2, 2002. "Better late than never as US mills raise tinplate prices," *Metal Bulletin* (26 Nov. 2001) at 29.

Exhibit 2
Percent of Increase of Proposed Slab Quota of Brazil from Year 2000 Imports

Slab Imports from Brazil in Year 2000 were: 2,645,078 net tons

	Year One (Tons)	Year Three (Tons)
Proposed Slab Quota	3,500,000	4,000,000
% of Increase over Year 2000 Volume	32.32%	51.22%

Source: Slab imports from Brazil in 2000 are from Department of Commerce, IM145 statistics, Proposed Slab Quotas are from Brazilian Respondents Comments (January 4, 2002) at iv.

Exhibit 3
Raw Steel Production Data
Source: Metal Bulletin at 15 (December 24, 2001)

Exhibit 4
Carbon and Alloy Steel Flat Products: Slabs
U.S. Imports (Country Specific Data)
(Quantity = short tons)

	1998	1999	2000	Jan.-Jun. 2000	Jan.-Jun. 2001
Australia	592,418	563,310	444,031	283,129	154,507
Brazil	1,648,897	2,815,276	2,645,078	1,505,350	726,404
China	2,295	32,835	169,730	69,818	5,726
Finland	32,549	36,461	45,550	27,528	12,384
Japan	137,094	408,037	318,008	180,175	81,708
Mexico	1,560,350	1,747,155	1,635,986	914,209	685,246
Russia	275,472	528,116	750,679	301,977	412,583
South Africa	84,183	0	33,483	33,483	109,937
Ukraine	315,914	355,136	670,389	393,786	22,053

Source: Department of Commerce, Import Statistics IM145 Census

Exhibit 4 (Cont.)
Carbon and Alloy Steel Flat Products: Slabs
U.S. Imports (Country Specific Data)
(Quantity = short tons)

	Jan.-Mar. 2001	Mar.-June 2001	July-Sept. 2001	Oct. 2001	Jan.-Sept. 2001	Jan.-Oct. 2001
Australia	76,328	78,178	78,802	39,177	233,309	272,486
Brazil	497,950	228,454	656,851	233,838	1,383,254	1,617,093
China	0	5,726	0	31,315	5,726	37,041
Finland	6,400	5,984	13,822	2,373	26,206	28,579
Japan	39,828	41,880	73,023	104	154,731	154,835
Mexico	308,943	376,303	448,972	62,407	1,134,219	1,196,625
Russia	222,196	190,387	237,364	263,705	649,948	913,652
South Africa	0	109,937	41,584	0	151,521	151,521
Ukraine	21,917	136	82,964	0	105,018	105,018

Source: Department of Commerce, Import Statistics IM145 Census

Exhibit 5
Carbon and Alloy Steel Flat Products: Slabs
Average Unit Value of Imports (Country Specific Data)
(Unit Value = $ CIF per ton)

	1998	1999	2000	Jan.-Jun. 2001
Australia	$213.87	$159.81	$205.61	$161.96
Brazil	$220.22	$165.55	$219.49	$185.32
China	$258.55	$190.96	$199.28	$268.68
Finland	$243.91	$200.92	$221.18	$206.98
Japan	$185.73	$161.93	$214.05	$186.60
Mexico	$229.90	$179.76	$230.79	$187.02
Russia	$212.44	$177.44	$210.14	$156.85
South Africa	$217.87	-	$252.84	$163.88
Ukraine	$224.51	$146.08	$191.26	$166.82

Source: Department of Commerce, Import Statistics IM145 Census

Exhibit 5 (Cont.)
Carbon and Alloy Steel Flat Products: Slabs
Average Unit Value of Imports (Country Specific Data)
(Unit Value = $ CIF per ton)

	July-Sept. 2001	Oct. 2001	Jan.-Sept. 2001
Australia	$168.23	$162.22	$164.08
Brazil	$170.28	$165.92	$178.18
China	-	$163.97	$268.68
Finland	$209.80	$225.95	$208.47
Japan	$180.13	$280.58	$183.55
Mexico	$196.55	$211.49	$190.79
Russia	$158.01	$155.42	$157.27
South Africa	$160.12	-	$162.85
Ukraine	$162.93	-	$163.75

Source: Department of Commerce, Import Statistics IM145 Census

Exhibit 6
Carbon and Alloy Steel Flat Products: Tin Mill
U.S. Imports from Australia, China, Korea and Taiwan
(Quantity = short tons; percentage increases = %)

	1999	2000	Jan.-Jun. 2000	Jan.-Jun. 2001	July-Sept. 2001	Jan.-Sept. 2001	1999 - 2000 % increase	06/00 - 06/01 % increase
Australia	19	490	26	4,577	2,966	7,544	2478.95%	17503.85%
China	3	326	0	7,856	3,401	11,258	10766.67%	
Korea	2,495	23,270	5,493	16,213	14,042	30,255	832.67%	195.16%
Taiwan	3,602	4,618	3,899	4,315	5,295	9,610	28.21%	10.67%

Source: Department of Commerce, Import Statistics IM145 Census

Exhibit 7
Carbon and Alloy Steel Flat Products: Tin Mill
U.S. Imports from Korea
(Quantity = short tons; percentage increases = %)

1999	2000	01/00-06/00	01/01-06/01	07/00-06/01	07/00-06/01 v. 1999 % increase	07/00-06/01 v. 2000 % increase
2,495	23,270	5,493	16,213	33,990	1262.32%	46.07%

Exhibit 8
Carbon and Alloy Steel Flat Products: Tin Mill
U.S. Imports from Brazil
(Quantity = short tons; percentage increases = %)

1996	1997	1998	1999	2000	1999-2000 % increase
4,987	11,761	10,386	27,222	44,809	798.52%

Exhibit 9
Carbon and Alloy Steel Flat Products: Tin Mill
Average Unit Value of Imports in the Third Quarter of 2001 (Country Specific Data)
(Unit Value = $ CIF per ton)

	July-Sept. 2001	**Amount below All countries' AUV**
Australia	$486.80	$83.95
Brazil	$447.47	$123.28
China	$510.21	$60.54
Korea	$507.35	$63.40
Taiwan	$474.64	$96.11
All countries	$570.75	-

Source: Department of Commerce, Import Statistics IM145 Census